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UNCLAS SECTION 01 OF 02 NIAMEY 000217

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SUBJECT: NIGER: PRESIDENT TANDJA FORMS CENI; JUDGES DISPUTE  
OATH-TAKING REQUIREMENT

Ref: a) Niamey 00211, b) Niamey 00121, c) Niamey 00111, d) 08  
Niamey 01176

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¶1. President Tandja signed a decree on March 25 appointing members of the Independent National Commission on Elections (CENI), consistent with Articles 10, 11, and 12 of the constitution. Moumouni Hamidou, current president of the National Committee to Pilot the Revision of the Voter Register (CNPREFE), will chair CENI; the First Vice President is lawyer Aissatou Zada of Niger's Bar Association and the Second Vice President is Rakia Kanta, member of CONGAFEN womens' group. In a second decree, President Tandja appointed 67 other CENI members, including 43 political party, two women's associations, two human rights associations, two labor unions, and 18 government agency representatives (principals and alternates).

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Background on CENI Selection Process  
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¶2. On March 20, the National Council for Political Dialogue (CNDP) - an advisory body made up of all political parties and headed by the prime minister - met to discuss the installation of CENI, a key step toward the local and national elections anticipated for 2009 (reftels). To avoid further delays in the preparation of the upcoming local and general elections, the CNDP urged the GON to establish the CENI immediately. On March 24, Minister of Justice Dagra Mamadou, referring to the Autonomous Union of Nigerien Judges Union (SAMAN) decision to step back from heading the various electoral commissions (national, regional, district, and local), assured that "...the Government will not cause any delays...the situation is not dramatic."

¶3. Minister Mamadou cited the provisions of the Electoral Code for the selection of CENI officials, namely: the president of the CENI shall be "a judge proposed by his/her peers, or an official recognized for his/her impartiality, competence and integrity, appointed by the President of the Republic..." (Article 10.2); "local electoral commissions shall be headed by judges appointed by the CENI president. However, in case of a shortage of judges, prosecutors, bailiffs, or, failing that, any other persons recognized for their impartiality, competence, and integrity may be called upon." (Article 12.1-2)

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Judges Divided: To Take an Oath, or Not To  
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¶4. On March 21, SAMAN held a general assembly to discuss judges' participation in the upcoming elections. SAMAN threatened not to participate in the elections if its members were required to take a religious oath. (Note: electoral commission leaders must be judges as per the revised 2004 Electoral Code (Art.12) and are required to take an oath by swearing on a holy book of their choosing (Art.11). At least 80% of SAMAN members did not participate in the 2004 elections in protest against this provision. End note.)

¶5. SAMAN judges claim that the Electoral Code statement is unconstitutional, as it violates the principles of a secular state. Furthermore, the judges claim that they are already sworn professionals, having taken the secular oath of office, and hold that the constitution does not require judges to take a religious oath. Finally, they maintain that they have successfully headed election commissions for the past 15 years without taking such an oath and do not see the need to take another oath. They also do not understand the motives behind the decision as stated in the revised Electoral Code.

¶6. On March 24, the other judges' union, the Independent Union of Nigerien Judges (SIMAN), said it would participate in the supervision of the electoral process. Claiming that the Electoral Code reflects the will of the people, SIMAN judges have agreed to take the oath. SIMAN also argues that the judges' secular oath of office relates to the profession of magistrates while the religious oath required by the Electoral Code applies to a special, temporary situation.

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Comment  
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¶7. The CENI is expected to be installed in its headquarters shortly. In 2004, there were concerns that judges' non-participation could call into question the credibility of elections, but they took place peacefully and the international community concluded that they were generally free, fair, and transparent. End comment.

¶8. Minimize considered.

WHITAKER